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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,733	01/08/2004	Timothy Noel Hentschel	209413-83524	1732
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LEXYL TRAVEL TECHNOLOGIES INC. P.O. BOX 927895 SAN DIAGO, CA 92192			JOSEPH, TONYA S	
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/707,733	HENTSCHEL ET AL.
	Examiner Tonya Joseph	Art Unit 3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 17-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 17-38 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 07 May 2004 is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received:

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 17-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claims 17, 20 and 35 use the transitional phrase, "providing for". Transitional phrases define the scope of a claim with respect to what un-recited additional components or steps, if any, are excluded from the scope of the claim. The use of the phrase "providing for" promotes doubt as to whether open or closed claim language is intended. Appropriate correction is required.

4. The term "successful bid" in claims 17, 19 and 36 is a relative term which renders the claim indefinite. The term "successful bid" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For Examination purposes, Examiner is interpreting any bid as being a successful bid.

5. Claim 18 recites the limitation "one said bid" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claims 21-23 attempt to define a relationship by using the phrase "relating to". For Example, Claim 21 recites the limitation, "wherein said posting relates to a plurality

of rooms". It is unclear at what point a posting has satisfied related requirement. For Examination purposes Examiner is interpreting "relates to" as including; i.e. a posting includes a plurality of rooms.

7. Claim 27 recites the limitation, "wherein said plurality of bidding entities a first bidding entity and a second bidding entity, wherein said first bid is submitted by said first bidding entity, wherein said second bid is submitted by said second bidding entity". The phrase is unclear. For Examination purposes, Examiner is interpreting a wherein said plurality of bidding entities comprises a first bidding entity and a second bidding entity.

8. The term "accessible by said second bidding entity" in claim 29 is a relative term which renders the claim indefinite. The term "accessible by" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For Examination purposes, Examiner is interpreting a first bid which can be seen by a second entity as being accessible.

9. The term "substantially real-time" in claim 30 and 35 is a relative term which renders the claim indefinite. The term "substantially real-time" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For Examination purposes, Examiner is interpreting any time as being substantially real-time.

10. Claims 31-32 recite limitations regarding completed membership forms and completed bid submission forms. It is unclear if a form is considered completed when

pertinent fields are filled in or if it is completed when the form in it's entirety has been filled in. For Examination purposes, Examiner is interpreting membership forms and bid submission forms that are submitted, are completed.

11. The term "associated with" and "special condition" in claim 33 is a relative term which renders the claim indefinite. The term "associated with" and "special condition" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For Examination purposes, Examiner interpreting a one bid with any condition as meeting the limitations of this claim.

12. Claim 35 uses the phrase, "providing for". It is unclear as to when a buyer interface has sufficiently *provided for* submitting a posting or receiving said reservation in response to said posting. For Examination purposes, Examiner is interpreting any buyer interface capable of performing the recitations as meeting the limitations of this claim.

13. Claims 18, 24-26, 28, 34 and 37-38 contain the same deficiencies through dependency and as such, are rejected for the same reasons.

Claim Rejections - 35 USC § 112

14. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

15. Claims 17 and 35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as

to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 17 and 35 are written in "single means claim" format since they recite only one element to do all of the functions recited. The claim is not written in "means-plus-function" language, however, in *Fiers v. Revel*, 984 F.2d 1164, 25 USPQ2d 1601 (Fed. Cir. 1993) the CAFC affirmed a rejection under 35 USC 112 of a claim reciting a single element that did not literally use "means-plus-function" language. Claims 17 and 35 are drawn to any server" and a "buyer interface" respectively, regardless of construct, that performs the function recited. This parallels the fact situation in *Fiers* wherein "a DNA" and a result was recited. The CAFC stated in *Fiers* at 1606 "Claiming all DNA's that achieve a result without defining what means will do so is not in compliance with the description requirement, it is an attempt to preempt the future before it has arrived". See also Ex parte Maizel, (BdPatApp&Int) 27 USPQ2d 1662, 1665 and Ex Parte Kung, (BdPatApp&Int) 17 USPQ2d 1545, 1547 (1/30/1989) where the claims at issue were rejected for being analogous to single means claims even though "means" was not literally used. Thus claims 17 and 35 yield a "server" and a "buyer interface" that achieves a result without defining what will do so.

Claim Rejections - 35 USC § 102

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17. Claims 17-20, 24-26, 30, 33-34 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by Moshal et al. U.S. Pre-Grant Publication No. 2001/0042041 A1.

18. As per Claim 17, Moshal teaches a server (see para. 74 lines 1-4 and para. 75 lines 1-3), said server providing for: a posting (see para. 131 lines 2-10); a reverse auction heuristic (see para. 113 lines 4-6); a plurality of bids, said plurality of bids including a successful bid (see para. 96 lines 8-11); wherein said server is configured to receive said posting (see para. 131 lines 2-10); wherein said server is configured to receive said bids in response to said posting (see para. 48 lines 2-4 and para. 49 lines 1-4); and wherein said server is configured to selectively identify said successful bid from said plurality of bids using said reverse auction heuristic (see para. 104 lines 6-10; para. 44 lines 11-16 and para. 183).

19. As per Claim 18, Moshal teaches the system of claim 17 as described above. Moshal further teaches an automated bid, wherein at least one said bid in said plurality of bids is said automated bid (see para. 46 lines 6-10).

20. As per Claim 19, Moshal teaches the system of claim 17 as described above. Moshal further teaches wherein said automated bid is said successful bid (see para. 46 lines 6-10 and para. 96 lines 8-17).

21. As per Claim 20, Moshal teaches the system of claim 17 as described above. Moshal further teaches said posting providing for a plurality of posting attributes (see para. 90 lines 3-5 and para. 94 lines 3-5, Examiner is interpreting a transactional value as a preferred price, the limitation, "*said posting attributes including at least three of: (a) a number of rooms; (b) a target star rating; (c) a preferred price; (d) a room type; (e) a*

location; (f) a check-in date; (g) a number of nights; (h) a meeting space requirement; and (i) a banquet space requirement" is considered non-functional descriptive material and as such is afforded little patentable weight.

22. As per Claim 24, Moshal teaches the system of claim 17 as described above. Moshal further teaches a bidding interface and a bidding entity (see para. 66 line 4 and para. 69 lines 1-6), wherein said bidding interface provides for said bidding entity submitting more than one said bid in response to said posting (see para. 66 lines 4-5).

23. As per Claim 25, Moshal teaches the system of claim 17 as described above. Moshal further teaches wherein said posting is received from a posting entity, and wherein said posting entity is not required to accept said successful bid (see para. 71 lines 3-7).

24. As per Claim 26, Moshal teaches the system of claim 17 as described above. Moshal further teaches wherein said posting is received from a posting entity (see para. 71 lines 3-7), the limitation, "*and wherein said posting entity is a group travel coordinator*" is considered non-functional descriptive material and as such is afforded little patentable weight.

25. As per Claim 30, Moshal teaches the system of claim 17 as described above. Moshal further teaches wherein said reverse auction heuristic is performed in a substantially real-time manner (see para. 43 lines 11-15 and para. 44 lines 11-14).

26. As per Claim 33, Moshal teaches the system of claim 17 as described above. Moshal further teaches, wherein at least one said bid is associated with a special condition (see para. 96 lines 17-25).

27. As per Claim 34, Moshal teaches the system of claim 17 as described above.

Moshal further teaches, wherein said server is configured to receive an acceptance relating to said successful bid (see para. 96 lines 8-11).

28. As per Claim 36, Moshal teaches populating a database with a plurality of participating bidders (see para. 69 lines 2-8); configuring a plurality of reverse auction parameters (see para. 44 lines 11-16; para. 88 and 89); providing an online form to accept postings from a plurality of potential buyers (see para. 260 and Fig. 12); performing a reverse auction in accordance with at least one said reverse auction parameter (see para. 113 lines 4-6); and transmitting an offer to at least one said potential buyer, wherein said offer is generated using said successful bid (see para. 253); wherein said reverse auction allows at least one said participating bidder to submit more than one said bid in response to said posting (see para. 71 lines 3-7). The limitation, "to identify a successful bid from a plurality of bids received from said plurality of participating bidders" is merely a statement of intended use and as such is afforded little patentable weight.

29. As per Claim 37, Moshal teaches the method of claim 36 as described above. Moshal further teaches wherein at least one bid in said plurality of bids is an automated bid (see para. 55 lines 7-11).

30. Claim 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Tokiwa U.S. Pre-Grant Publication No. 2002/0002529 A1.

31. As per Claim 35, Tokiwa teaches, a buyer interface, a posting (see para. 33 lines 4-9); a reservation (see para. 38 lines 9-12 and para. 29 lines 1-3); wherein said buyer

interface provides for submitting said posting (see para. 12 lines 2-3); wherein said buyer interface provides for receiving said reservation in response to said posting in a substantially real-time manner (see para. 37 lines 11-24); and wherein said posting includes a location, a price, a number of rooms, and a check-in date (see para. 38 lines 10-13). Examiner notes, although Tokiwa discloses the limitation, "*wherein said posting includes a location, a price, a number of rooms, and a check-in date*", the limitation is considered non-functional descriptive material and as such is afforded no patentable weight.

Claim Rejections - 35 USC § 103

32. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

33. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Tokiwa et al. U.S. Pre-Grant Publication No. 2002/002529 A1.

34. As per Claim 21, Moshal teaches the system of claim 17 as described above. Moshal does not explicitly teach wherein said posting relates to a plurality of rooms. Tokiwa teaches, The offer conditions registered includes the offer number (i.e., a serial number), name of purchaser, name of regions 1 to 3 for staying overnight, date, desired

purchase price, and desired number of rooms (see para. 38 lines 10-13) It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Tokiwa to include wherein said posting relates to a plurality of rooms to determine a match between sales and offer conditions, as taught in Tokiwa para. 37 lines 1-3.

35. As per Claim 22, Moshal teaches the system of claim 17 as described above. Moshal does not explicitly teach wherein said successful bid relates to a plurality of rooms. Tokiwa teaches, The offer conditions registered includes the offer number (i.e., a serial number), name of purchaser, name of regions 1 to 3 for staying overnight, date, desired purchase price, and desired number of rooms (see para. 38 lines 10-13). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Tokiwa to determine a match between sales and offer conditions, as taught in Tokiwa para. 37 lines 1-3.

36. As per Claim 23, Moshal teaches the system of claim 22 as described above. Moshal does not explicitly teach wherein said plurality of rooms relate to a plurality of hotels. Tokiwa teaches wherein said plurality of rooms relate to a plurality of hotels (see Fig. 5B). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Tokiwa to determine a match between sales and offer conditions, as taught in Tokiwa para. 37 lines 1-3.

37. Claims 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Faber et al. U.S. Patent No. 6,519,570 B1.

38. As per Claim 27, Moshal teaches the system of claim 17 as described above. Moshal further teaches a plurality of bidding entities, wherein said server is configured to receive said plurality of bids from said plurality of bidding entities (see para. 66 lines 4-6); Moshal does not explicitly teach said plurality of bids including a first bid and a second bid, wherein said plurality of bidding entities a first bidding entity and a second bidding entity, wherein said first bid is submitted by said first bidding entity, wherein said second bid is submitted by said second bidding entity. Faber teaches a plurality of bids including a first bid and a second bid, wherein said plurality of bidding entities a first bidding entity and a second bidding entity, wherein said first bid is submitted by said first bidding entity, wherein said second bid is submitted by said second bidding entity (see Col. 7 lines 54-67; Col. 8 lines 1-15 and Col. 10 lines 37-40 and 49-51). It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Faber to permit multiple customer bidding on a service, as taught in the Abstract of Faber.

39. As per Claim 29, Moshal in view of Faber teaches the system of claim 27 as described above. Moshal does not explicitly teach wherein said first bid is accessible by said second bidding entity. Faber teaches, For example, the customer may be informed over a telephone connection of his current position in the queue and of a price being offered by other customers in the queue. Additionally, the system may receive a bid

over the telephone connection via the telephone keypad or with voice-recognition software (see Col. 7 lines 43-46). It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Faber to encourage a higher bid by a second bidder, as taught in Faber Col. 8 lines 10-22.

40. Claims 28 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Faber et al. U.S. Patent No. 6,519,570 B1 in further view of Official Notice.

41. As per Claim 28, Moshal teaches the system of claim 17 as described above. Moshal does not explicitly teach wherein said first bid is hidden from said second bidding entity. Official Notice is taken that hiding a first bid from a second bidding entity is old and well known in the art of auctioning. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the systems of Moshal and Faber to include the teachings of Official Notice to encourage a higher bid by a second bidder.

42. As per Claim 38, Moshal teaches the method of claim 36 as described above. Moshal does not explicitly teach wherein said plurality of bids includes a first bid and a second bid, wherein said plurality of participating bidders includes a first bidder and a second bidder. Faber teaches wherein said plurality of bids includes a first bid and a second bid, wherein said plurality of participating bidders includes a first bidder and a second bidder (see Col. 7 lines 54-67; Col. 8 lines 1-15 and Col. 10 lines 37-40 and 49-51). It would have been prima facie obvious to one of ordinary skill in the art at the time

of invention to modify the method of Moshal to include the teachings of Faber to permit multiple customer bidding on a service, as taught in the Abstract of Faber. Moshal does not explicitly teach and wherein said first bid is hidden from said second participating bidder. Official Notice is taken that hiding a first bid from a second bidding entity is old and well known in the art of auctioning. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the methods of Moshal and Faber to include the teachings of Official Notice to encourage a higher bid by a second bidder.

43. Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Official Notice.

44. As per Claim 31, Moshal teaches the system of claim 17 as described above. Moshal does not explicitly teach, a plurality of completed membership forms from a plurality of bidding entities, wherein each said bidding entity submitting said bids is associated with at least one said completed membership form. Official Notice is taken that a plurality of completed membership forms from a plurality of bidding entities, wherein each said bidding entity submitting said bids is associated with at least one said completed membership form is old and well known in the art of auction management. It would have been prima facie obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Official Notice to maintain a record of bidding entities.

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45. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moshal U.S. Pre-Grant Publication No. 2001/0042041 A1 in view of Holden et al. U.S. Pre-Grant Publication No. 2001/0032175 A1.

46. As per Claim 32, Moshal teaches the system of claim 17 as described above. Moshal does not explicitly teach, a plurality of completed bid submission forms, wherein each said bid is associated with at least one said completed bid submission form. Holden teaches, Once a bid has been placed, a confirmation screen is displayed acknowledging that the bid has been accepted. Only valid, winning bids are accepted. If the bid is not accepted, an explanation screen is displayed for the bidder to explain why the bid was not allowed. The bidder can then go back to the bidding screen to correct the bid, or view the latest status (see para. 65) . It would have been *prima facie* obvious to one of ordinary skill in the art at the time of invention to modify the system of Moshal to include the teachings of Holden to allow bid acknowledgement, as taught in Holden para. 65.

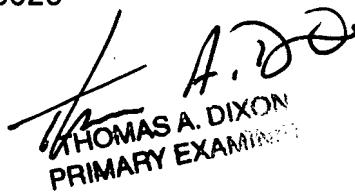
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tonya Joseph whose telephone number is 571-270-1361. The examiner can normally be reached on Mon-Fri 7:30am-5:00pm First Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571 272 0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tonya Joseph
Examiner
Art Unit 3628



THOMAS A. DIXON
PRIMARY EXAMINER